

# Statement of Customary Land Tenure Workshop

## Taunggyi, Shan State, Myanmar 26-27 August 2016

Civil society representatives from Southern, Northern and Eastern Shan State came together for two days in Taunggyi to discuss how best to protect customary land tenure systems and how to respond to the main land related problems they are facing, by establishing basic principles and strategise on further collaboration.

Present were 135 representatives of Kachin, Karen, Ahka, Danu, Bamar, Lahu, Shan, Palaung (Ta-ang), TaungYo, Yin-Net Yin-Kya, Pao and Wa ethnic communities and organisations.

A series of customary land tenure workshops have been conducted across Shan State; a Southern Shan State workshop was held in Taunggyi (29-30 of May 2016), a Northern Shan State workshop was held in Lashio (13-14 of June 2016) and an Eastern Shan State workshop was held in Kengtung of (13-14 of August 2016). At these workshops, they discussed and identified issues and actions together for further collaboration that would ensure protection and guarantees for existing customary land tenure systems and to address land related problems encountered in each ethnic region.

Representatives from Southern, Northern and Eastern Shan State met together to determine basic principles, joint strategies and future activities at the final workshop in Taunggyi. This is the first attempt ever made in our history that diverse ethnic communities from the whole of Shan State came together to identify feasible solutions to solve the critical land related issues they are facing.

### **The whole of Shan State has suffered from the land crisis as follows:**

- The centralization through land formalization and the lack of jurisdiction over land policy by the regional government undermined the meaningful participation of local authorities and local people in land policy development, implementation and decisions related to land governance.
- Local communities in ethnic areas in Shan State are facing land grabbing by various actors: the Myanmar army, the Forest Department, companies, militia groups backed by the Myanmar army, and organizations related to the Government.
- Land has been confiscated in all kinds of ways: by using the current land laws (including the Vacant, Fallow and Virgin Land Law), and in cases of restitution they often did not give the land back to the rightful original owner, but instead to other people.
- Land has been grabbed for different purposes: agri-business investment, military camps, to seize natural resources like gold and coal, urbanization and public housing, and for infrastructure and hydro-power projects.

- Corruption and bribery, abuse of power and incompetent officers are encouraging and contributing to land grabbing.
- Some areas have suffered from water grabbing and diversion of water sources to stop farmers from holding on to their lands. (For example, irrigation for large scale commercial plantations diverted water away from the household use and agricultural use for local communities.)
- Chemical waste disposals from mining activities operating in confiscated lands have not only contaminated local water sources but also destroyed nearby agricultural lands by dumping waste soil.
- New hydropower dam projects which have irreversible negative consequences are also threatening the life of local people.
- Local people have been living on their lands for generations without the need to have any official documents and simply are not aware of the new requirement to have legal documents for the right to own and use their ancestral land, and thus their land has been taken away arbitrarily.
- In some areas, people are trying to register their land under Form 7 of the new 2012 law to try to protect them from the threat of losing their land.
- Some of the villagers lost their land even though they have Form 7 in hand. The government will confiscate your land whenever they want, no matter whether you have Form 7 or not.
- National laws impose provisions that restrict giving loans only to people who have Form 7. As the process to apply for Form 7 is very complicated, this makes it very difficult for farmers to get a loan.
- The weak enforcement of laws that have strong provisions by the implementing government agencies severely undermines the rule of law.
- Existing laws fail to recognize customary tenure systems practiced by the ethnic people. Customary tenure systems includes entitlement to manage community forest, shifting cultivation, pastoral lands, common lands and village reserved lands, as well as other land forms and water sources that fall under the village boundary. These practices have been functioned very well until the introduction of the new land laws and Form 7.
- The government is allocating concessions to business entities without seeking agreement from local communities by imposing the Vacant, Fallow and Virgin Land Law for what they call 'unregistered' village land.
- It was just a shift of entitlement to confiscated land that was never returned fully back to the original owner though government has renounced confiscated farmlands in some areas.
- Corrupted officers are allocating what they call 'vacant, fallow and virgin' land to companies and businessmen rather than redistributing tenure rights to the small-scale land users. However, there is no vacant, fallow and virgin land in Shan State as all the land that government has allocated are common lands, community forests, pastoral lands and village reserve lands meant for the next generation.
- The current Farmland Management Committee members have failed to take responsibility and accountability as they were not elected by the people for the people.

***After the two-day workshop, all the representatives collectively developed and reached consensus on a set of basic principles***

**Basic principles for customary land tenure systems of Shan State:**

- All the land in ethnic regions must belong to the people of these lands as it is their life-blood and their way of life. Local ethnic people must have full entitlement for the management of all land and related resources within their regions with their own customary systems.
- Customary tenure systems include management of community forest, wildlife sanctuary, protected forest, sacred land, cemetery land, shifting cultivation areas, pastoral land, common land and village reserve land including other land and water sources and watershed areas within the village boundary.
- All land confiscated for any reason must be returned back to the original owners in a transparent way.
- A systematic documentation of customary tenure systems must be conducted together with local communities.
- Introduce a land size ceiling for non-indigenous people to restrict land accumulation.
- Internally displaced persons and refugees are entitled to return to their village of origin. Substitution of similar condition of land should be provided if restitution is not deemed possible.
- Policy development around land and related natural resources at either national level or state/regional level must be based on customary tenure systems. The government should include the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into the national legal framework.
- There should be no project implementation in conservation areas of indigenous people (eg. community forest, reserve areas and sacred land).
- There must be free, prior and informed consent of local ethnic people for development projects deemed to be for the benefit of the wider public. Decision making at all levels must involve community participation.
- The National Land Use Policy, national land laws and regulations must have clear provisions that recognize and protect customary land use rights, ownership and control.
- A land management committee must be established with real representatives elected by the public to determine village and township level land management decisions.
- All women and men shall have equal rights to land.

## Contact persons (focal points in yellow):

### Southern Shan State

- Mai Pang Youth Group (Nang Shining) 09792672906
- Metta Development Foundation (U Myo Aung Mon) 09790658280
- Pa-O Youth Organization (Khun Kham Tee) 09770271076
- **Farmer and Land User Union (U Win Shing Myat) 09250784106**
- Environmental Conservation and Farmer Development Organization (Ma Nge Nge) - 09260325746)
- Farmer Development Union (Khun Kyaw Swe) 09265064874

### Northern Shan State

- Northern Shan Kachin Development Organization (Daw Ma Bawk) 09265270188, 0947320245
- TSYU (Mai SheinTun) 09263011076
- TYN (Nann Kay Khaing) 09792819718, 09457647144
- **Lashio Metta (U ZawNawng) 09256133460**

### Eastern Shan State

- **Lahu Women Organization (Daw Aye ThidaMyint) 09428219086**
- Ahka National Development Party, Keng Tong (U Myo Naing Oo) 0949031046
- Dawna Pone Yeik Social Group (U Myint Aung) 09428231230
- Metta San Yel Organization (Ma San Shein) 09428219305